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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 IN RE ONLINE DVD RENTAL ANTITRUST) MASTER FILE NO.: M:09-CV-2029 PJH
11 LITIGATION)
12) MDL NO. 2029
13) Hon. Phyllis J. Hamilton
14 This Document Relates to:) AFFIDAVIT OF LAYN R. PHILLIPS
15 ALL ACTIONS.)
16)

1 I, LAYN R. PHILLIPS, declare as follows:

2 1. I mediated the settlement of this matter between Plaintiffs on the one hand and
3 Wal-Mart Stores, Inc. and Walmart.com USA LLC. (collectively "Wal-Mart") on the other hand.
4 I make this affidavit in support of Plaintiffs' Motion for Preliminary Approval.

5 2. I am a former United States Attorney and served as a United States District Judge
6 for four years, presiding over more than 140 federal trials. I am currently a litigation partner in the
7 Newport Beach office of Irell & Manella LLP, where I have practiced complex civil litigation,
8 internal investigations and alternative dispute resolution since 1991.

9 3. For over 15 years, I have successfully mediated high-stakes civil disputes for
10 Fortune 500 companies nationwide and am considered one of the leading mediators in the
11 resolution of multi-party matters, some involving as many as 150 parties. I have mediated
12 hundreds of disputes referred by private parties and courts, and have been appointed a Special
13 Master by various federal courts in complex civil proceedings. I serve as a Fellow in the
14 American College of Trial Lawyers. In addition, I have been nationally recognized as a mediator
15 by the Center for Public Resources Institute for Dispute Resolution (CPR), serving on CRP's
16 National Panel of Distinguished Neutrals. I am also a Diplomat Member of the California
17 Academy of Distinguished Neutrals.

18 4. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A.

19 5. On May 16, 2010, Plaintiffs and Wal-Mart participated in a mediation session
20 before me. As a result of that mediation session, and as a result of other discussions, Plaintiffs and
21 Wal-Mart reached an agreement in principle to settle the Plaintiffs and the Class' claims against
22 Wal-Mart.

23 6. On August 26, 2010, I signed a Term Sheet that was also signed by counsel for
24 Plaintiffs and counsel for Wal-Mart.

25 7. Subsequently, Plaintiffs and Wal-Mart negotiated the terms of a settlement
26 agreement and related documents.

1 8. After presiding over the mediation process in this case, I am convinced that the
2 settlement between Plaintiffs and Wal-Mart is the product of vigorous and independent advocacy
3 and arm's-length negotiation conducted in good faith.

4 9. Based on my knowledge of the issues in dispute, my review of the materials
5 presented before, at, and after the mediation sessions, the rigor of the negotiations, and the benefits
6 achieved in the settlement, I believe that the terms of the settlement are fair, adequate, reasonable
7 and in the best interests of the Settlement Sub-Classes.

8 10. Among other things, I believe that the 2:1 ratio for payments to members of the
9 Netflix Settlement Sub-Class as compared to the members of the Blockbuster Settlement Sub-
10 Class is a fair reflection of the relative strengths of the two Sub-Classes' claims, particularly in
11 light of the Court's rulings on the two Motions to Dismiss the Complaint(s) of the Blockbuster
12 Class.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 Executed this 3rd day of December, 2010, at Newport Beach, California.

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19 _____
20 LAYN R. PHILLIPS